

ATTACHMENT C
RESPONDENT'S ARGUMENT

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8 **BEFORE THE**
9 **BOARD OF ADMINISTRATION**
10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
11 **STATE OF CALIFORNIA**

12 Margaret Wise,

13 Respondent,

14 vs.

15 Mt. Diablo Unified School District

16 Respondent.

Case No.: 2016-0141

OAH No.: 2016041069

APPLICANT'S BRIEF REQUESTING
THE BOARD TO ADOPT THE
PROPOSED DECISION OF THE
ADMINISTRATIVE LAW JUDGE

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19 **COMES NOW**, applicant, Margaret Wise, through her attorney of record and
20 requests that the Board adopt the Decision of the Administrative Law Judge to allow
21 applicant to file her Application for Disability Retirement Benefits. Applicant does not
22 request the Board to designate this Decision as precedent.
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24 Applicant agrees with the determination by Administrative Law Judge Schlichtmann
25 and requests that this Decision be adopted.

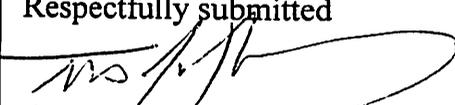
26 As thoroughly explained by Judge Schlichtmann, Ms. Margaret Wise filed for
27 disability benefits within a reasonable period of time after receiving the correct disability
28 estimate.

1 Respondent had been given the estimate that the difference between service versus
2 disability retirement would only be \$20.00 to \$30.00 per month versus the over \$300.00 a
3 month it actually turned out to be. As the Administrative Law Judge noted, case law outlines
4 that it was established policy that required the liberal interpretation of pension statutes and
5 that the Court has held that as a matter of law, an employee's mistaken election of a disability
6 retirement over service retirement, to which they are entitled, could be corrected under
7 Federal Government Code 20180, now Government Code 20160.
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9 Based on this, it is clear that respondent made a mistake in performing the action of
10 her retirement election, and she is entitled to relief. Case law also indicates that it was
11 unreasonable to attribute to the legislative intention to preclude an otherwise eligible
12 employee from receiving a disability pension on the sole ground that the disabling
13 contention was not diagnosed as such at the time of the retirement. As outlined on Page 8 of
14 her Decision, the facts in this case parallel the case law and are clear from applicant's
15 testimony and the facts of the case that had she been provided with accurate estimates for
16 disability retirement versus service retirement benefit rates, she would not have requested a
17 service retirement. Once she received the difference in benefits, she promptly began the
18 process of filing for the disability retirement application.
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22 Therefore, the respondent agrees with the opinion of Administrative Law Judge
23 Schlichtmann and requests that this Decision be adopted.
24

25 Respectfully submitted

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27 Thomas J. Biskobing, Esq.
28 Attorney for Respondent

Dated: July 21, 2016